

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

FILED

2017 JAN 12 AM 10:00

REGIONAL HEARING CLERK
EPA REGION VI

IN THE MATTER OF:)

TUBAL-CAIN MARINE SERVICES, INC.)
PORT ARTHUR, TEXAS)

RESPONDENT)
_____)

DOCKET NO. RCRA-06-2017-0915

CONSENT AGREEMENT AND FINAL ORDER

The Director of the Compliance Assurance and Enforcement Division of the United States Environmental Protection Agency ("EPA"), Region 6 ("Complainant") and Tubal-Cain Marine Services, Inc. ("Respondent") in the above-referenced proceeding, hereby agree to resolve this matter through the issuance of this Consent Agreement and Final Order ("CAFO").

I. PRELIMINARY STATEMENT

1. This proceeding for the assessment of a civil penalty is brought by EPA pursuant to Section 3008 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6928, as amended by the Hazardous and Solid Waste Amendments of 1984 ("HSWA"), and is simultaneously commenced and concluded through the issuance of this CAFO pursuant to 40 C.F.R. §§ 22.13(b), 22.18(b)(2)-(3) and 22.37.

2. Notice of this action was given to the State of Texas prior to the issuance of this CAFO, as required by Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

3. For the purposes of this proceeding, Respondent admits the jurisdictional allegations herein; however, Respondent neither admits nor denies the specific factual allegations contained in this CAFO.

4. Respondent explicitly waives any right to contest the allegations and its right to appeal the proposed Final Order set forth therein and waives all defenses that have been raised or could have been raised to the claims set forth in the CAFO.

5. Compliance with all the terms and conditions of this CAFO shall resolve only Respondent's liability for civil penalties for those violations that are set forth herein.

6. Respondent consents to the issuance of the CAFO, to the assessment and payment of the civil penalty in the amount and by the method set forth in this CAFO, and to the conditions specified in the CAFO.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. PRELIMINARY ALLEGATIONS

7. Respondent is a corporation incorporated under the laws of the State of Texas.

8. "Person" is defined in 30 T.A.C. § 3.2(25)¹ [40 C.F.R. §§ 260.10 and 270.2] as "an individual, corporation, organization, government or governmental subdivision or agency, business trust, partnership, association, or any other legal entity."

9. Respondent is a "person" as that term is defined in 30 T.A.C. § 3.2(25) [40 C.F.R. §§ 260.10 and 270.2].

10. "Owner" is defined in 30 T.A.C. § 335.1(115) [40 C.F.R. § 260.10] as "the person who owns a facility or part of a facility."

11. Operator" is defined in 30 T.A.C. § 335.1(114) [40 C.F.R. § 260.10] as "the person responsible for the overall operation of a facility."

¹ All citations to the EPA authorized Texas hazardous waste program refer to Title 30 of the Texas Administrative Code (T.A.C.) as amended, effective through December 31, 2009. 77 Fed. Reg. 71344, 71352 (November 30, 2012); 40 C.F.R. Part 272, Appendix A, Texas. The corresponding Code of Federal Regulation (C.F.R.) citations are also provided.

12. Owner or operator” is defined in 40 C.F.R. § 270.2 as “the owner or operator of any facility or activity subject to regulation under RCRA.”

13. “Facility” is defined in 30 T.A.C. § 335.1(61)(A) [40 C.F.R. § 260.10] as “all contiguous land, and structures, other appurtenances, and improvements on the land, used for storing, processing, or disposing of municipal hazardous waste or industrial solid waste [....] A facility may consist of several treatment, storage, or disposal operational units (e.g., one or more landfills, surface impoundments, or combinations of them).”

14. Respondent owns and/or operates a barge maintenance operation in Port Arthur, Texas (“facility”).

15. The facility identified in Paragraph 14 is a “facility” as that term is defined in 30 T.A.C. § 335.1(61)(A) [40 C.F.R. § 260.10].

16. Respondent is the “owner” and/or “operator” of the facility identified in Paragraph 14, as those terms are defined in 30 T.A.C. § 335.1(114)-(115) [40 C.F.R. §§ 260.10 and 270.2].

17. The facility is currently registered as a non-generator of hazardous waste in the State of Texas. Respondent’s initial notification of hazardous waste activity was submitted on July 14, 2009, and the facility was registered as a conditionally exempt small quantity generator (“CESQG”). In its most recent notification submitted on November 14, 2014, Respondent changed the status of the facility from a CESQG to a non-generator.

18. On or about September 30, 2014 through October 2, 2014, representatives of EPA inspected the facility pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927. In its June 22, 2015 written response to the inspection report and in the September 21, 2016 meeting with EPA, Respondent affirmed that it had taken all actions necessary to correct the violations cited in this CAFO and to comply with the associated RCRA requirements.

B. VIOLATIONS

Count 1 – Failure to Conduct a Hazardous Waste Determination

19. A person who generates a solid waste must determine if that waste is hazardous. 30 T.A.C. § 335.62 [40 C.F.R. § 262.11].
20. “Solid waste” includes any discarded material abandoned or used in a manner that constitutes disposal. 30 T.A.C. § 335.1(146) [40 C.F.R. §§ 260.10 and 261.2].
21. “Spent” material used in a manner constituting disposal is solid waste. 40 C.F.R. § 261.2(c).
22. Respondent conducted maintenance operations on barges including paint removal by using Black Beauty sandblast sand. Once the sandblast sand is used, it is “spent” and cannot be reused without reclamation. Respondent disposed of spent sandblast sand on site at the facility as “fill” in an area adjacent to Slackwater Harbor.
23. Respondent did not complete a waste determination on the spent sandblast sand prior to on-site disposal.

Count 2 – Failure to Obtain a Permit Prior to Conducting Permit Required Activities

24. “Universal waste” refers to specific wastes that are subject to the universal waste requirements. 30 T.A.C. § 335.261(16) [40 C.F.R. § 273.9].
25. Paint and paint-related wastes can be managed as universal waste. 30 T.A.C. § 335.261(16)(F),
26. Paint becomes a solid waste when it is abandoned by being accumulated, stored or treated in before or in lieu of being abandoned by being disposed of. 40 C.F.R. § 261.2(b). Solvent used

to clean painting equipment becomes solid waste by virtue of being "spent" when it can no longer be used for its intended purpose with reclamation. 40 C.F.R. § 261.1(c).

27. A handler of universal waste is prohibited from diluting or treating universal waste. 30 T.A.C. 335.262(c)(1) [40 C.F.R. §§ 273.11(b), 273.31(b)].

28. A handler of universal waste must manage waste in a container that closed and structurally sound. 30 T.A.C. § 335.262(c)(2).

29. Respondent treated paint and paint-related waste by adding a solidifying agent and/or by allowing containers of paint-related waste to remain open in order solidify them via treatment by evaporation of the volatile fraction. Many of the containers of paint-related waste were in poor condition.

30. A handler of universal waste may accumulate universal waste for no longer than one year from the date the universal waste is generated. 30 T.A.C. § 335.261(b) [40 C.F.R. §§ 273.15(a), 273.35(a)].

31. A "large quantity handler of universal waste" is a universal waste handler that accumulates 5,000 kilograms or more total universal waste at any time. 30 T.A.C. § 335.261(16) [40 C.F.R. § 273.9].

32. Based upon manifests provided by Respondent and the inspection of the facility by EPA representatives, Respondent accumulated 5,000 kilograms or more of total paint-related universal waste and accumulated paint-related universal waste for longer than one year from the date the waste was generated.

33. Treatment of universal waste and/or storage of universal waste for a period longer than one year from the date the waste is generated may only be conducted by a universal waste destination facility. 30 T.A.C. 335.262(c)(1) [40 C.F.R. §§ 273.9, 273.60].

34. A destination facility is subject to applicable requirements under RCRA, including obtaining a RCRA hazardous waste permit for applicable activities. 30 T.A.C. § 335.262(c)(1) [40 C.F.R. § 273.60(a)].

35. Respondent does not meet the requirements of a destination facility nor has Respondent obtained an appropriate permit under RCRA to perform treatment of universal waste or storage of universal waste for more than one year after the waste was generated.

Count 3 – Failure to Meet Requirements for Universal Waste

36. Paragraphs 24 through 26 are incorporated herein by reference.

37. Universal waste containers for paint and paint-related waste must remain closed, except when necessary to add or remove waste. 30 T.A.C. § 335.262(c)(2)(A).

38. Universal waste containers for paint and paint-related waste must be structurally sound. 30 T.A.C. § 335.262(c)(2)(B).

39. Universal waste containers for paint and paint-related waste must be labeled or marked with the words “Universal Waste – Paint and Paint-Related Wastes.” 30 T.A.C. § 335.262(c)(2)(F).

40. A hazardous waste determination must be performed for universal waste consisting of paint and paint-related waste and documentation of this determination shall be maintained for at least three years. 30 T.A.C. § 335.262(b), (d); 30 T.A.C. § 335.504.

41. Paragraph 29 is incorporated herein by reference.

42. Respondent failed to properly label drums, date, close, or provide an adequate hazardous waste determination for approximately 45 drums of paint and paint-related waste.

III. TERMS OF SETTLEMENT

A. CIVIL PENALTY

43. Pursuant to the authority granted in Section 3008 of RCRA, 42 U.S.C. § 6928, and upon consideration of the entire record herein, including the Findings of Fact and Conclusions of Law, which are hereby adopted and made a part hereof, and upon consideration of the seriousness of the alleged violations, Respondent's good faith efforts to comply with the applicable regulations, and the June 2003 RCRA Civil Penalty Policy, it is hereby **ORDERED** that Respondent be assessed a civil penalty of **sixty three thousand dollars (\$63,000)**. An amount that includes \$5,746 economic benefit. Respondent shall pay the assessed civil penalty according to the schedule set below. The first payment is due within thirty (30) days of the effective date of this CAFO, and each subsequent payment is due one month later until the penalty is paid in full. Payment amounts, including a one percent (1%) interest charge, are laid out in the table below:

Payment No.	Due Date (from the effective date of CAFO)	Payment	Interest Accrued	Principal Balance
				\$ 63,000.00
1	30 days	\$2,652.82	\$0.00	\$60,347.18
2	2 months	\$2,652.82	\$51.97	\$57,746.33
3	3 months	\$2,652.82	\$49.73	\$55,143.24
4	4 months	\$2,652.82	\$42.89	\$52,533.31
5	5 months	\$2,652.82	\$45.24	\$49,925.73
6	6 months	\$2,652.82	\$41.60	\$47,314.51
7	7 months	\$2,652.82	\$40.74	\$44,702.43
8	8 months	\$2,652.82	\$37.25	\$42,086.86
9	9 months	\$2,652.82	\$36.24	\$39,470.28
10	10 months	\$2,652.82	\$33.99	\$36,851.45
11	11 months	\$2,652.82	\$30.71	\$34,229.34
12	1 year	\$2,652.82	\$29.48	\$31,606.00
13	13 months	\$2,652.82	\$26.34	\$28,979.52
14	14 months	\$2,652.82	\$24.95	\$26,351.65
15	15 months	\$2,652.82	\$22.69	\$23,721.52
16	16 months	\$2,652.82	\$18.45	\$21,087.15
17	17 months	\$2,652.82	\$18.16	\$18,452.49
18	18 months	\$2,652.82	\$15.38	\$15,815.05

19	19 months	\$2,652.82	\$13.62	\$13,175.85
20	20 months	\$2,652.82	\$10.98	\$10,534.01
21	21 months	\$2,652.82	\$9.07	\$7,890.26
22	22 months	\$2,652.82	\$6.79	\$5,244.23
23	23 months	\$2,652.82	\$4.37	\$2,595.78
24	2 years	\$2,598.02	\$2.24	0.00

44. Respondent shall pay the assessed civil penalty by certified check, cashier's check, or wire transfer, made payable to "Treasurer, United States of America, EPA - Region 6". Payment shall be remitted in one of three (3) ways: regular U.S. Postal mail (including certified mail), overnight mail, or wire transfer. For regular U.S. Postal mail, U.S. Postal Service certified mail, or U.S. Postal Service express mail, the check(s) should be remitted to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

For overnight mail (non-U.S. Postal Service, e.g. Fed Ex), the check(s) should be remitted to:

U.S. Bank
Government Lockbox 979077
US EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
Phone No. (314) 418-1028

For wire transfer, the payment should be remitted to:

Federal Reserve Bank of New York
ABA: 021030004
Account No. 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read
"D 68010727 Environmental Protection Agency"

PLEASE NOTE: Docket number RCRA-06-2017-0915 shall be clearly typed on the respective checks to ensure proper credit. If payment is made by check, the check shall also be accompanied by a transmittal letter and shall reference Respondent's name and address, the case name, and docket number of the CAFO. If payment is made by wire transfer, the wire transfer instructions shall reference Respondent's name and address, the case name, and docket number of the CAFO. Respondent shall also send a simultaneous notice of such payment, including a copy of the check and transmittal letter, or wire transfer instructions to the following:

Chief, Waste Compliance I Section (6EN-H1)
Waste Enforcement Branch
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Lorena Vaughn
Regional Hearing Clerk (6RC-D)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Respondent's adherence to this request will ensure proper credit is given when penalties are received in the Region.

45. Respondent agrees not to claim or attempt to claim a federal income tax deduction or credit covering all or any part of the civil penalty paid to the United States Treasurer.

46. If Respondent fails to submit payment of the civil penalty according to the schedule set forth above, Respondent may be subject to a civil action to collect any unpaid portion of the assessed penalty, together with interest, handling charges, and nonpayment penalties, as set forth below.

47. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by law, EPA will assess interest and late payment penalties on outstanding debts owed to the United

States and a charge to cover the costs of processing and handling a delinquent claim. Interest on the civil penalty assessed in this CAFO will begin to accrue thirty (30) days after the effective date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid by the respective due date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). Moreover, the costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b).

48. EPA will also assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) day period that the penalty remains unpaid. In addition, a penalty charge of up to six percent per year will be assessed monthly on any portion of the debt which remains delinquent more than ninety (90) days. 40 C.F.R. § 13.11(c). Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

B. PARTIES BOUND

49. The provisions of this CAFO shall apply to and be binding upon the parties to this action and their successors and assigns. Respondent shall advise its officers and directors and those employees and agents involved in carrying out the obligations under this CAFO of the terms of this CAFO. The undersigned representative of each party to this CAFO certifies that he or she is fully authorized by the party whom he or she represents to enter into the terms and conditions of this CAFO and to execute and to legally bind that party to it.

C. RETENTION OF RIGHTS

50. EPA does not waive any rights or remedies available to EPA for any other violations by Respondent of Federal or State laws, regulations, or permitting conditions.

51. Nothing in this CAFO shall limit the power and authority of EPA or the United States to take, direct, or order all actions to protect public health, welfare, or the environment, or prevent, abate or minimize an actual or threatened release of hazardous substances, pollutants, contaminants, hazardous substances on, at or from Respondent's facility. Furthermore, nothing in this CAFO shall be construed or to prevent or limit EPA's civil and criminal authorities, or that of other Federal, State, or local agencies or departments to obtain penalties or injunctive relief under other Federal, State, or local laws or regulations.

52. Complainant reserves all legal and equitable remedies available to enforce the provisions of this CAFO. In any such action to enforce the provisions of this CAFO, Respondent shall not assert, and may not maintain, any defense of laches, statute of limitations, or any other equitable defense based on the passage of time. This CAFO shall not be construed to limit the rights of the EPA or United States to obtain penalties or injunctive relief under RCRA or its implementing regulations, or under other federal or state laws, regulations, or permit conditions.

53. In any subsequent administrative or judicial proceeding initiated by Complainant or the United States for injunctive relief, civil penalties, to enforce the provisions of this CAFO, or other appropriate relief relating to this Facility, Respondent shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the Complainant or the United States in the subsequent

proceeding were or should have been brought in the instant case, except with respect to claims for civil penalties that have been specifically resolved pursuant to this CAFO.

54. Respondent waives any right it may possess at law or in equity to challenge the authority of the EPA or the United States to bring a civil action in a United States District Court to compel compliance with this CAFO and to seek an additional penalty for such noncompliance, and agrees that federal law shall govern in any such civil action. Respondent also consents to personal jurisdiction in any action to enforce this CAFO in the appropriate Federal District Court.

55. This CAFO is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. Respondent is responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits. Respondent's compliance with this CAFO shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. Complainant does not warrant or aver in any manner that Respondent's compliance with any aspect of this CAFO will result in compliance with provisions of the RCRA or with any other provisions of federal, State, or local laws, regulations, or permits.

D. COSTS

56. Each party shall bear its own costs and attorney's fees. Furthermore, Respondent specifically waives its right to seek reimbursement of its costs and attorney's fees under 5 U.S.C. § 504 and 40 C.F.R. Part 17.


E. EFFECTIVE DATE

57. This CAFO, and any subsequent modifications, become effective upon filing with the Regional Hearing Clerk.

THE UNDERSIGNED PARTIES CONSENT TO THE ENTRY OF THIS CONSENT AGREEMENT AND FINAL ORDER:

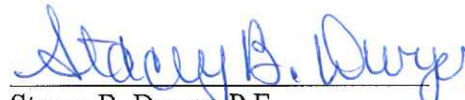
FOR THE RESPONDENT:

Date: 12/12/2016


Randy Cooper, Operations Manager
Tubal-Cain Marine Services, Inc.

FOR THE COMPLAINANT:

Date: 01/09/2017


Stacey B. Dwyer, P.E.
Acting Director
Compliance Assurance and
Enforcement Division

FINAL ORDER

Pursuant to the Section 3008 of RCRA, 42 U.S.C. § 6928, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby ratified. This Final Order shall not in any case affect the right or EPA or the United States to pursue appropriate injunctive relief or other equitable relief for criminal sanctions for any violations of law. This Final Order shall resolve only those causes of action alleged herein. Nothing in this Final Order shall be construed to waive, extinguish or otherwise affect Respondent's (or its officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action. Respondent is ordered to comply with the terms of settlement as set forth in the Consent Agreement. Pursuant to 40 C.F.R. § 22.31(b), this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Date: 1/11/17

~~Renea Ryland~~
Regional Judicial Officer

Thomas Rucki

CERTIFICATE OF SERVICE

I hereby certify that on the 12 day of January, 2017, the original and one copy of the foregoing Consent Agreement and Final Order (CAFO) was hand delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, and that a true and correct copy of the CAFO was were placed in the United States Mail, certified mail, return receipt requested 70140150000024545323, addressed to the following:

Randy Cooper, Operations Manager
Tubal Cain Marine Services, Inc.
8737 Old Yacht Club Road
Port Arthur, Texas 77642

Kari Jackson